



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2012-0367 FRL -9692-7]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Louisiana has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Louisiana's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this issue of the **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on **[insert date 60 days after the date of publication]** unless the EPA receives adverse written comment by **[insert date 30 days after the date of publication]**. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will

not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: *patterson.alima@epa.gov*.
3. Mail: Alima Patterson, Region 6, Regional Authorization Coordinator, State /Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733.
4. Hand Delivery or Courier. Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should

avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Louisiana's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733, (214) 665-8533) and Email address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

Most commonly, States must change their programs because of changes to the EPA's regulations

in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits and

- take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Louisiana is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if the EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is

being withdrawn.

F. For What Has Louisiana Previously Been Authorized?

The State of Louisiana initially received final authorization on February 7, 1985, (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995; October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000; January 2, 2001 (66 FR 23) effective March 5, 2001; December 9, 2003 (68 FR 68526) effective February 9, 2004, June 10, 2005 (70 FR 33852) effective August 9, 2005; November 13, 2006 (71 FR 66116) effective January 12, 2007, August 16, 2007 (72 FR 45905) effective October 15, 2007, May 20, 2009 (74 FR 23645) effective July 20, 2009 and June 24, 2011(76 FR 122)effective August 23, 2011. On April 25, 2012, Louisiana applied for approval of its program revisions for RCRA Cluster XX in accordance with 40 CFR 271.21(b)(3).

Since 1979 through the Environmental Affairs Act, Act 449 enabled the Office of

Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission to conduct an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which amended and reenacted La. R. S. 30:1051 et seq. as the Environmental Quality Act, renaming the Environmental Affairs Act (Act 1938 of 1979). This Act created Louisiana Department of Environmental Quality (LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs, to the new Department. The LDEQ has lead agency jurisdictional authority for administering the Resource Conservation and Recovery Act (RCRA) Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the La.R.S.30:2011 et. seq. allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the Federal statutory tests, which are outlined in the United States Environmental Protection Agency regulatory requirements under 40 CFR 271, Subpart A, for final authorization. The submittal of this application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final authorization to operate all aspects of their hazardous waste management programs in lieu of the Federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle

II of Title 30 of the Louisiana Revised Statutes. With this application Louisiana is applying for authorization for specific areas of the State regulations identified as requiring authorization and the listed Checklists are: 222, 223 and 224 will allow the State to implement the equivalent RCRA Subtitle C portion of the program. Louisiana has demonstrated to EPA that its program was substantially equivalent in its management of hazardous waste to the Federal program developed pursuant to RCRA. The State's program is equivalent to the Federal program as outlined in revision Checklists 222, 223 and 224 which was adopted and became effective on March 20, 2012. EPA did not authorize The State of Louisiana for portions of the provisions of the Standardized Permits because the State did not adopt the federal regulations.

G. What Changes Are We Authorizing with Today's Action?

On April 25, 2012, Louisiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant the State of Louisiana Final authorization for the following changes: The State of Louisiana's program revisions consist of regulations which specifically govern RCRA Cluster XX as documented in this Federal Register:

Description of Federal requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous state authority
1. OECD Requirements: Export Shipments of Spent Lead-Acid Batteries. (Checklist 222).	75 FR 1236 - 1262, January 8, 2010.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials, 2010 edition and the September 2010 Supplement. Sections 1101.B, 1113.F, 1113.I.1, 1113.I.1.a-b, 1113.I.2, 1127.A.1, 1127.A.1.a, 1127.A.1.b, 1127.A.2, 109 ‘Competent authority’, 109 (see Concerned countries), 109 “Country of export”, 109 “Country of import”, 109 “Country of transit”, 109 “Exporter”, 109 “importer”, 109 “OECD area”, 109 “OECD means Organization for Economic Cooperation and Development”

Description of Federal requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous state authority
Checklist 222 Continues	75 FR 1236 – 1262, January 8, 2010.	109”Recognized trader”, 109”Recovery facility”, 109”Recovery operations” 109”Transboundary movement”, 1127.B.1, 1127.B.1.a, 1127.B.1.ai-ii, 1127.B.1.b, 1127.B.1.b.i-ii, 1127.B.1.b.ii9a) 1127.B.b.ii.(b), 1127.B.1.b.iii, Note to Paragraph 1127.B.1.b.iii, 1127.B.1.c, 1127.B.1.c.i, Notes to Paragraph 1127.B.1.c.i-ii, Note to Paragraph 1127.B.1.c.ii, 1127.B.1.d, 1127.B.1.d.i-ii, 1127.B.2, 1127.B.2.a-b, Note to Paragraph 1127.B.2.b-c, 1127.B.3, 1127.B.a, 1127.B.a.i-ii, 1127.B.3.c, 1127.B.4, 1127.B.4.a-b, 1127.B.5, 1127.B.5.a-b, 1127.B.6, 1127.B.6.a-e, 1127.B.7,

Description of Federal requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous state authority
Checklist 222 Continues	75 FR 1236 – 1262, January 8, 2010.	1127.C.1-2, 1127.C.2.a, 1127.C.2.a.i-ii-iii, 1127.C.2.b, 1127.C.2.b.i-ii, 1127.C.3-4, 1127.C.4.a-n, Note to Paragraph 1127.C.4.n, 1127.C.5, 1127.D.1, 1127.D.1.a-b, 1127.D.2, 1127.D.2.a-b-g, 1127.D.3-5, 1127.E.1-2, 1127.E.2.a-d, 1127.E.3, 1127.E.3.a-b, 1127.E.4-5, Note to Paragraph 1127.E.5, 1127.E.6, 1127.E.7, Note to Paragraph 1127.E.7, 1127.F.1-2, 1127.G.1, 1127.G.1.a-e, 1127>G.1.e.i-ii, 1127.G.1.f, 1127.G.2, 1127.G.2.a-c, 1127.G.3, 1127.G.3.a, 1127.G.3.a.i-iv, 1127.G.3.b, 1127.H, 1127.I.1, 1127.I.1.a-b, 1127.I.2-4, 1301.F, 1531.B, 1516.B.5, 1516.B.4, 4311 (1531), 4353.A (1516), and 4145.A.Table, as amended December 20, 2011, effective March 20, 2012.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
2. Hazardous Waste Technical Corrections and Clarifications. (Checklist 223).	75 FR 12989-13009 March 18, 2010.	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials, 2010 edition and the September 2010 Supplement. Sections 109”New hazardous waste management facility or new facility”, 109”Processed Scrap Metal, 109, table1, 105.D.1.p.vi, 108.B, 108.E, 108.E.1-2, 108.E.2 Comment, 108.F intro, 108.F.2, 108.Gintro, 108.G.2, 4105.A.2, 4105.A.2, 4105.A.2.b, 4105.A.1, 109.Empty Container 1.a-b, 109.Empty Container 2.a, 109.Empty Container.2.c, 4903.D.8, 4901.A.1-2, 4901.B.1.Table 1, 4901.C.Table 2, 4901.F.Table 4, Chapter 49 Table 6, 1101.D, 1103.C. 1107.D.7, 1107.D.7.a, 1107.D.7.a.i-ii, 1107.D.7.b-d, 1109.E.1, 1109.E.1.a.iv(b), 1109.E.1.c, 1109.E.1.e, 1109.E.1.a.iv(b), 1109.E.2, 1109.E.4, 1109>E.5&6, 1109.E.7.c, 1109.E.9, 1109.E.12, 1111.B.2, 1111.C.1-2, 1111.C.4, 1111.C.4.a-b,

Description of Federal requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous state authority
Checklist 223 Continues	75 FR 12989-13009 March 18, 2010.	1111.C.3 Note, 1123.B, 1305.C, 1513.B.2, 1513.F.4.b, 1516.C.5.a.vi, 1516.C.6.a.i-c, 2515.E, 2519.A.2, 2603.A.3.b, 2603.A.3.c-d, 2603.E.4.d.vi, 4341 (1513.B), 4349 (1513.F), 1516.C.5.a.vi, 1516.C.6.a.i, 1516.C.6.b-c, 4507.E, 4511.A.2, 4139.B-B.2, 4141.B, 4143.D, 4145.B, 3003.C.1, 3003.C.2, 2299.Appendix Table 2, 2299.Appendix 7, 307.A, and 307.B, as amended December 20, 2011, effective March 20, 2012.

Description of Federal requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous state authority
3. Withdrawal of Emission Comparable Fuel Exclusion. (Checklist 224).	75 FR 33712-33724 June 15, 2010	Environmental Regulatory Code, Louisiana Department of Environmental Quality, ERC Title 33, Part V. Hazardous Waste and Hazardous Materials, 2010 edition and the September 2010 Supplement. Sections 105.D.1.q, 4909 Title, 4909.A, 4909.B, 4909.B.1, 4909.B.1.a-b, 4909.B.2, 4909.C, 4909.C.1-5, 4909.D.3, 4909.D.3.a, 4909.D.3.a.i-iii, 4909.D.3.b, 4909.D.5.a, 4909.D.5.a.i-iii, 4909.D.5.b, 4909.D.6, 4909.D, 4909.d.1, 4909.d.1.a.i, 4909.D.a.i(a)-(e), 4909.D.1.a.ii-iii, 4909.D.1.b, 4909.D.1.b.i-v, 4909.D.2, 4909.D.2.a-b, 4909.D.2.b.1-ii, 4909.D.2.c-d, 4909.D.7, 4909.D.7.a, 4909.D.7.a.i-v, 4909.D.7.b, 4909.D.7.b.i-viii, 4909.D.7.c, 4909.D.8, 4909.D.8.a, 4909.D.8.a.i-iv, 4909.D.8.b-c, 4909.D.8.c.i-ii, 4909.D.8.d-h, 4909.D.8.h.i-ii, 4909.D.8.i, 4909.D.9-10, 4909.D.10.a, 4909.D.10.a.a.i-iii, 4909.D.10.b-h, 4909.D.10.1, 4909.D.10.i-v, 4909.D.11-12, 4909.12.a-c,

Description of Federal requirement (include checklist #, if relevant)	<u>Federal Register</u> date and page (and/or RCRA statutory authority)	Analogous state authority
Checklist 224 Continues	75 FR 33712-33724 June 15, 2010	4909.D.13-15, 4909.D.15.a, 4909.15.b-c, 4909.D.15.c.i-11, 4909.D.16-17, 4909.D.17.a-b, 4909.D.18, and 4909.E, as amended December 20, 2011, effective March 20, 2012.

H. Where Are the Revised State Rules Different From the Federal Rules?

In this authorization of the State of Louisiana program revisions for Cluster XX rules, there are no provisions that are more stringent or broader in scope.

I. Who Handles Permits After the Authorization Takes Effect?

Louisiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Louisiana is not yet authorized.

J. How Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

K. What Is Codification and Is the EPA Codifying Louisiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart T for this authorization of Louisiana's program changes until a later date. In this

authorization application the EPA is not codifying the rules documented in this Federal Register notice.

M. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law.

Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant

and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective **[insert date 60 days after publication in the Federal - Register]**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

DATED: June 15, 2012

Samuel Coleman, P.E.
Acting Regional Administrator
Region 6

BILLING CODE 6560-5-P

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